



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

FCC 86-265
36708

News media information 202/254-7674.

Recorded listing of releases and texts 202/632-0002.

May 22, 1986

OPERATION OF "FIRST COME/FIRST SERVE" FM BROADCAST APPLICATION PROCESSING SYSTEM

1. This Public Notice clarifies the operation of the "first come/first serve" processing system promulgated by the Report and Order in MM Docket 84-750, 50 Fed. Reg. 19936 (May 13, 1985). In that Docket, the Commission instituted two new, interrelated systems governing the filing and processing of commercial FM broadcast applications, the "window" and "first come/first serve" processing systems. Id. at paras. 27-32, 33-36; 47 C.F.R. §§ 73.3564(c), 73.3573(f). Under the "window" system, the Commission specifies a filing period (a "window") during which applications for construction permit can be filed to occupy either a new allocation created by a rule-making Report and Order or one of the allocations created in Dockets 80-90 and 84-231. When a new allocation is created by rulemaking, the Report and Order allocating the channel establishes the filing window. For a Docket 84-231 channel, a special Public Notice defines the window's opening and closing dates.

2. The Report and Order in MM Docket 84-750 recognized that no applications at all might be filed during the pertinent window. In such a case, the "first come/first serve" processing system automatically commences the day after the window period expires. Report and Order, supra at para. 33. A construction permit will issue to the first fully qualified applicant to file a tenderable and acceptable application.

3. However, the Report and Order, supra, did not specifically address how the "first come/first serve" mechanism is triggered when all window applications are later found to be defective, i.e., either not sufficient for tender or not acceptable for filing. Current Mass Media Bureau practice provides for the release of a Public Notice announcing:

- (a) the return or dismissal of all timely filed, window applications for either tenderability or acceptability defects; and
- (b) the initiation of "first come/first serve" status effective as of the date of the last return or dismissal.

4. However, to ensure fairness to all potential applicants, henceforth, a Public Notice announcing the return or dismissal of all applications filed pursuant to a specific window will also specify a future date (7 days from the release of a Public Notice) on which, for the first time, "first come/first serve" applications may be tendered. **No new applications will be accepted for tender prior to the release of this public notice.** Applications received between the date of release of the public notice and the seventh day thereafter will be treated as if received on the seventh day. Should the seventh day following release of a Public Notice fall on a holiday, as defined in 47 C.F.R. § 1.4(d)

(computation of time), the day by which first come/first serve applications must be tendered is the first business day following the holiday.

5. This prohibition against the premature filing of "first come/first serve" applications will be strictly enforced. Only in this way can we ensure both the integrity of the "first come/first serve" filing system and the equitable treatment of all potential "first come/first serve" applicants.

6. Our mandating the release of such "first come/first serve" Public Notices is a minor clarification of our Docket 84-750 procedures and contravenes none of the rules promulgated therein. We can make such clarification without any need for a rule-making proceeding. See 5 U.S.C. § 553(b)(3)(A).

Action by the Commission May 20, 1986 by Public Notice. Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

-FCC-

For further information contact Lenore Cunningham at (202) 632-6485.